IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4123 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANAKAR LAXMANBHAI DEVABHAI

Versus

SABARKANTHA DISTRICT PANCHAYAT

Appearance:

1. Special Civil Application No. 4123 of 1999

MR JV JAPEE for Petitioner No. 1

MR NAVIN K PAHWA for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

MR SK PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/07/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 2.4.1999 (Annexure "H") passed by the State Government in the Panchayats & Rural Housing Development Department confirming the order dated 30.12.1998 (Annexure "F")

passed by the District Panchayat Appeal Committee of Sabarkantha District.

2. The dispute is about a portion of the land in village Aroda in Idar Taluka of Sabarkantha District. According to respondent No. 3, he is occupying the disputed land for the last 35 years and respondent No. 3 has already applied before the Collector and Prant Officer, Himmatnagar for regularization of his possession over the said land. However, the petitioner herein made an application to the gram panchayat for removal of encroachment. The gram panchayat issued notice dated 10.9.1998 (Outward No. 18) for removal of encroachment.

Thereupon respondent No. 3 preferred an appeal before the appeal committee of the District Panchayat. The appeal was filed against the aforesaid eviction notice and only the Sarpanch of Aroda Gram Panchayat was joined as a party respondent in the said appeal. By order dated 30.12.1998, the District Panchayat Appeal Committee made certain observations and directed the gram panchayat to follow the procedure for regularization of the third respondent's possession over the land in question on the ground that the possession was over a period of 50 years and that the gram panchayat had issued the eviction notice without verifying the documents.

The petitioner who had submitted an application before the District Panchayat Appeal Committee, but was not joined as a party to the proceedings, carried the matter in revision before the State Government. The State Government dismissed the revision application on the ground that the petitioner had not submitted an application for being joined as a party till the appeal was heard by the appeal committee. The revisional order further stated that near the petitioner's house, there is garbage collection and, therefore, if the petitioner has any inconvenience in using the road around his house, the gram panchayat should remove such garbage.

3. The grievance of Mr. Japee for the petitioner is that when it was at the instance of the petitioner that the gram panchayat had initiated the proceedings for removing the encroachment made by respondent No. 3, the petitioner was a necessary or at least a proper party in the appeal before the appeal committee, but in the said appeal only the Sarpanch of the gram panchayat was joined as a party with the result that the petitioner did not have an opportunity of putting forward his case. As soon as he came to know about the appeal proceedings, the petitioner made an application for being joined as a

party.

4. On the other hand, Mr. SK Patel, learned counsel for respondent No. 3 has submitted that the land in question is not a part of a public street as already held by the Collector in his order dated 14.5.1996 in Land Dispute Case No. 110 of 1994 and that the said order was passed after local inspection of the site.

5. In rejoinder, Mr. Japee points out that the said order of the Collector has been set aside by the Joint Secretary (Appeals) in the Revenue Department and that, therefore, the order dated 14.5.1996 of the Collector cannot be relied upon for any purpose.

It appears that the order of the Joint Secretary (Appeals) has been challenged in another suit filed by one of the village people having a house in the same line as respondent No. 3.

6. In view of the aforesaid factual scenario, it appears that the petitioner ought to have been given an opportunity of being heard when the gram panchayat had initiated the eviction proceedings against respondent No. 3 at the instance of the petitioner. If the order of the District Panchayat appeal committee is allowed to stand, the Aroda Gram Panchayat will have no other option but to regularise the third respondent's possession over the land in question and thereafter the petitioner will have no remedy whatsoever.

7. In view of the aforesaid set of circumstances, the Court sets aside the impugned orders of the appeal committee as well as the State Government and directs the appeal committee to decide the matter afresh after joining the present petitioner as a party respondent in the appeal before the appeal committee and to decide the appeal afresh in accordance with law after giving an opportunity of hearing to all the parties affected including the petitioner and respondent No. 3. It will also be open to the appeal committee to hear any other party likely to be affected by the outcome of the appeal.

8. It is clarified that this Court has not gone into the merits of the disputes between the parties and that the appeal committee shall hear and decide the appeal without being influenced by its previous order as well as the order of the State Government which are both hereby set aside nor shall the appeal committee be influenced by any pending civil suits between the parties.

The learned counsel for the parties assure the Court that their clients and their counter parts shall extend full cooperation with the appeal committee for expeditious disposal of the appeal. Accordingly, the appeal committee is directed to hear and decide the appeal by 20.10.2001.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-